



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, ३ अप्रैल, १९९३/१३ अप्रैल, १९१५

हिमाचल प्रदेश सरकार

LAW DEPARTMENT
Legislation (English) Section

NOTIFICATION

Shimla-171002, the 3rd April, 1993

No. LLR-D(6) 26/92-Legislation.—The Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Act, 1993 recently enacted by the President of India on 3rd April, 1993 and published in the Gazette of India (Extra-ordinary) Part-II, Section I, dated the

3rd April, 1993 is hereby republished in the Himachal Pradesh Government Rajpatra for the information of the General Public.

By order,

Sd/-
Secretary.

THE HIMACHAL PRADESH TAX ON LUXURIES (IN HOTELS AND LODGING HOUSES) AMENDMENT ACT, 1993

President's Act No. 7 of 1993

(3rd April, 1993)

Enacted by the President in the Forty-fourth year of the Republic of India.

AN

ACT

further to amend the *Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979.*

In exercise of the powers conferred by section 3 of the Himachal Pradesh State Legislature (Delegation of Powers) Act, 1993, the President is pleased to enact as follows:—

1. (1) This Act may be called the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Act, 1993.

Short title and commencement.

(2) It shall be deemed to have come into force on the 1st day of July, 1992.

2. In the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 (hereinafter referred to as the principal Act), in section 2, for clauses (d) and (e), the following clauses shall be substituted, namely:—

Amendment of Section 2.

“(d) “hotel” means any premises or part of premises including a house-boat, restaurant, bar or a tent where lodging with or without board or any kind of eatables or beverages or other services are by way of business provided for a monetary consideration, and includes such premises as are given on rent during any period of a financial year ;

(e) “luxury provided in a hotel” means accommodation for residence provided in a hotel, rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, sports, extra beds and other amenities provided in a hotel) is twenty-five rupees per person per day or more:”

3. In section 4 of the principal Act,—

(i) in sub-section (4),—

Amendment of Section 4.

(a) for the words “the entire period of a financial year”, the words “such period of financial year as may be specified by notification issued under this sub-section” shall be substituted;

(b) the following proviso shall be inserted at the end, namely:—

“Provided that the period of a financial year to be notified under this sub-section shall not be less than fifty per cent of the number of days in that financial year.”;

(ii) after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) During the period commencing from the 1st day of July, 1992 and ending on the day the notification revising the rate of luxury tax under sub-section (5) is published in the Official Gazette issued after the promulgation of the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Ordinance, 1992 the luxury tax for the purposes of sub-section (4) shall be and shall always be deemed to have been levied at the rate of ten paise in a rupee.”; and

H.P. Ord.
7 of 1992.

(iii) in sub-section (6), for the words “the foregoing sub-sections” the words, brackets and figure “sub-section (2)” shall be substituted.

Amend-
ment of
Section 17.

4. In section 17 of the principal Act, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the State Government may, for the purposes of sub-section (4) of section 4 make rules with retrospective effect, but not earlier than the 1st day of July, 1992.”.

Repeal
and
saving.

5. (1) The Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Ordinance, 1993 is hereby repealed.

Ord. 16 of
1993.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken, under the corresponding provisions of the principal Act, as amended by this Act, as if the provisions of this Act were in force at all material times.

SHANKER DAYAL SHARMA,
President.

B. R. ATRE,
Joint Secretary to the Government of India.

Reasons for the Enactment

Under the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979, the system of levy of luxury-tax was modified with effect from the 1st July, 1992 so as to empower the Government to assess and recover the luxury-tax on lump-sum basis after taking into consideration, among other factors, the entire period of a financial year but after reducing the rate of luxury-tax from ten per cent to five per cent for this purpose. In addition to this, the definition of luxury provided in a hotel was also modified and the requirements of the minimum charges for levy of luxury-tax was also abolished. These provisions were challenged by some hoteliers by means of Civil Writ Petitions in the High Court of Himachal Pradesh on the grounds that they have been made liable to pay luxury-tax for the entire financial year despite the fact that the actual occupancy was far less and that it was also not reasonable to tax the payments for luxury below rupees twenty-five per person per day. The new system of lump-sum luxury-tax had the effect of taxing fifty per cent of the luxury available in a hotel because for the purpose of assessment against the luxury-tax recovered at the rate of ten per cent from the customers, the hotelier was actually liable to pay the same at the rate of five per cent. Yet in order to impart greater clarity to tax provisions, it became essential to suitably amend the aforesaid Act to meet the plea of the Civil Writ Petitioners. Thus, instead of the entire period of a financial year, the assessment and recovery of luxury-tax shall be made after taking into account fifty per cent of the number of days in a financial year and the rate of luxury tax as ten paise in a rupee instead of five paise in a rupee. Besides this, the luxury-tax shall be levied only when the charges for luxury are rupees twenty-five or more per person per day. It was also essential to amend the aforesaid Act retrospectively, so as to make it applicable with effect from the 1st day of July, 1992 and to validate such action.

2. Since the Legislative Assembly was not in session and the amendment in the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 for the aforesaid purpose had to be made urgently, the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) (Amendment) Ordinance, 1992 (H. P. Ord. 7 of 1992) was promulgated under clause (1) of article 213 of the Constitution of India by the Governor of Himachal Pradesh on the 21st October, 1992. Before the said Ordinance could be replaced by a regular enactment the powers of the Legislature of the State of Himachal Pradesh to make laws has been declared by the Proclamation issued by the President on the 15th December, 1992 under article 356 of the Constitution, to be exercisable by or on under the authority of Parliament. As the Parliament was not in session, the life of the H. P. Ordinance 7 of 1992 was extended by the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Ordinance, 1993 (Ord. 16 of 1993) promulgated by the President on the 25th January, 1993. The said power has now been conferred by Parliament on the President under article 357(i) (a) of the Constitution by enacting the Himachal Pradesh State Legislature (Delegation of Powers) Act, 1993.

3. Under the proviso to sub-section (2) of section 3 of the Himachal Pradesh State Legislature (Delegation of Powers) Act, 1993, the President shall, before enacting any President's Act, consult a Committee constituted for the purpose consisting of members of both the Houses of Parliament. The provisions of the aforesaid Ordinance will be expiring by the 4th April, 1993 and it is necessary to replace that Ordinance by the President's Act before that date. As the said Committee has not so far been constituted and the matter is very urgent in nature, and the time left is very short, it is propose to enact the measure without reference to the Committee.

K. VENKATESAN,

Secy. to the Govt. of India
Ministry of Finance
(Department of Expenditure).

